

April 4, 2016

Hon. Gregory Todd  
Chair - Judicial Redistricting Commission  
217 North 27<sup>th</sup> Street, Room 516  
P.O. Box 35026  
Billings, Montana 59107

Re: Redistricting Proposals

Dear Chairman Todd and Commission Members:

First and foremost, thank to each of you for your service on the commission and the countless hours you have spent and will undoubtedly spend studying the issue of possible redistricting which I, and I believe others, recognize as the Supreme Court's and Supreme Court Administrator's attempt to provide relief to the court's in Montana's major population centers (i.e. Billings, Bozeman, Great Falls, Helena, and Missoula). I do not envy your task.

Like my colleagues who have written regarding their concerns with the various proposals under consideration by the commission, I too feel compelled to weigh in. I also believe that the proposals under consideration by the commission are rife with problems which many of my colleagues and others have amply identified (e.g. fundamental flaws with the workload assessment relied upon by Ms. McLaughlin; disenfranchisement of voters in the affected districts; hampering rural citizens' access to justice in the affected districts; increased and hazardous travel necessitated by several of the proposals along with the additional stress and strain upon the affected judges; scheduling and logistical difficulties necessitated by several of the proposals; the loss or potential loss of qualified judges who have served with honor and distinction; increased inefficiencies occasioned by the various proposals; shifting the legislature's focus from providing additional judges which are clearly justified to instead appear to attempt to address the need through the ruse of redistricting; the negative impact of the various proposals on the affected judges' ability to help one another with cases involving substitution, disqualification, recusal, conflict, etc...). I join in and echo their observations, concerns, opinions, and sentiments. Instead of reiterating those things, I would like to speak

specifically about some of them from the perspective of my district and my staff and my experience. I would also like to preface my comments by saying that I have the utmost respect for my colleagues in Billings, Bozeman, Great Falls, Helena, Missoula, and across the State. They are, in my opinion, some of the most astute and dedicated judges from the well spring of astute and dedicated judges that we have within the State. My comments and observations are not intended and should by no means be taken as disparaging or demeaning to those folks whatsoever. I have clerked and/or worked in several of those districts and am keenly aware of the very real and undeniable burgeoning caseloads and associated challenges with which they contend.

I have served as the district judge for the fourteenth judicial district for some 16 years. I have, according to my judicial assistant, served in at least 28 of Montana's 56 counties including my own and handled all manner of cases. I have presided over countless cases without my district and regularly preside over cases in several districts other than my own. I am, again according to my judicial assistant, currently presiding over some 21 cases in other districts. I have, over the years, traveled countless thousands of miles and spent countless hours to handle what I suspect are hundreds of cases out of district.

For example, over the last year or so and among many others, I conducted law and motion days in Great Falls when Judge Macek was injured. I handled the infamous State v. Rambold case and handled several law and motions days and at least one trial in Yellowstone County when Judge Baugh resigned. I also conducted law and motion over several days when Judge Todd had knee surgery and while he convalesced. I am also presently handling a suit against Judge Fagg in Yellowstone County. I handled several cases in Stillwater County including State v. Aguado, a child sex case, which resulted in two separate week long trials as the jury hung on some of the counts in the first trial. Just two weeks ago I handled law and motion days in three separate counties on three separate days for Judge Jones while he was on vacation. Last fall I handled another child sex case in Fergus County that resulted in a 6 day trial. The case is ongoing, has resulted in the filing, briefing, and hearing of hundreds of pages of motions which has consumed and will continue to consume countless hours of my time. I have had several such trials in Fergus County over the years and have regularly presided over cases in that district. Ironically, the only two cases I have presided over that are currently on appeal to the Montana Supreme Court are cases from outside my district.

Because of my admittedly lower case load, I have had the luxury of assisting my fellow judges when the need has arisen and have willingly done so. I continue to do so and am happy to do it. I only mention it because I do not believe that the work load assessment(s) relied upon by Court Administration have given or give credit for such when I believe credit is due.

In point of fact, the workload assessment does not, from my view, take many things into consideration. By way of example, the assessment does not reflect the many hours that I and my staff have spent and spend administering and enforcing the temporary preliminary water and district court decrees on the Musselshell River, the Smith River, and/or their tributaries within and without my district. For some 12 years I have annually appointed, advised, and supervised some 5-7 water commissioners at any given time to distribute both "decreed" water from the

Musselshell River and its tributaries and "stored" water from the four storage reservoirs located on the river. My Court and the referenced water commissioners serve some 300 plus water users from Lennup, Montana to Fort Peck Lake. At last count there were over 900 points of diversion within the referenced area.

For the last several years, I have also appointed, advised, and supervised a water commissioner on the Smith River and its tributaries. I have also, at times, appointed water commissioners on other tributaries within the district. The process has been and continues to be a Herculean task. For example, every spring I meet with my chief water commissioners to discuss the upcoming enforcement season. We discuss enforcement dates, advertising for commissioners, wages, insurance, bonding, water commissioner training, anticipated problems, etc... . My office, in conjunction and with the assistance of my chief commissioners, then drafts and publishes advertisements for commissioners. I and the chief commissioners review the various applications that are received for deputy commissioner positions, conduct any interviews that we deem necessary, and ultimately I select the commissioners for the upcoming enforcement season. I then draft letters to the applicants notifying them of their acceptance (or not) and draft and issue an enforcement order for the season which sets the parameters for enforcement, fixes the start and stop dates for enforcement, fixes the wages of the various commissioners, fixes the amount of the bond that each commissioner must post by law, mandates worker's compensation insurance for the commissioners, etc... . 300 plus copies of the order are made and disseminated by my judicial assistant and clerk of court to the various water users prior to the established enforcement date. Selected water commissioners are notified and appear before me and are sworn to discharge their duties for the impending irrigation season. After enforcement commences, the commissioners regularly and routinely consult with me throughout the season regarding distribution and enforcement issues. Water users are billed for water usage throughout the irrigation season. Monies paid in are processed through the clerk of court's office and my office issues disbursement orders to the water commissioners for accrued and ongoing wages and expenses. The enforcement season typically ends around October 1 of each year depending upon the availability of water (or not). Another order issues from me directing the commissioners to submit a final distribution report for the year detailing the total amount of water distributed, the total amount distributed to each water user, the enforcement costs and expenses for the year, the pro rata share of costs and expenses per water user, the total acre feet of water remaining in the storage reservoirs, etc... . A final bill is prepared and submitted to each of the water users for their pro rata share of the enforcement expenses for the year. Water users have 20 days to file any objection to the final bill or their bill is fixed by the Court as stated. If objections are filed, the Court must conduct hearings to resolve them. The process commences again the following spring and is the same or similar with regard to enforcement on the Smith River and the various tributaries. Again, none of this considerable time and effort is reflected in the workload assessment whatsoever. Nor is the fact that the Montana Water Court is, as I write, commencing final adjudication of the water rights within basins 40-A and 40-C (the entire Musselshell River basin). Peter Fritsch, the water master assigned to the basins, and I have discussed that the process will likely be highly contentious and may well be ongoing for some time. While the district court is not directly involved in the adjudication process, I believe that the continued viability of the enforcement project by my Court and water commissioners will necessitate that I stay abreast of and remain informed about the final adjudication process.

Similarly, the workload assessment does not take into consideration my service on the Montana Supreme Court Technology Commission, the Governor's advisory board for abused and neglected kids, the board of the Montana Sex Offender Treatment Association, or that I am the secretary for the Montana Judges' Association and last year's treasurer. Nor does the assessment take into consideration my service on the judges' benchbook committee. The assessments did not, historically, take my service on the judicial education and other boards, commissions, and committees into consideration nor my 3 years of service on the Montana Supreme Court Sentence Review Division into consideration. The latter requiring quarterly travel to and from the men's and woman's prisons where the three judge panel heard 40-60 cases over the course of two days.

I do not believe that the assessment(s) properly weight the cases involving pro se litigants which have proliferated over the past several years. I would venture to guess that I personally spend at least twice and often three times the amount of time wrestling with such cases as the litigants have absolutely no idea about even the fundamentals of pleading, the rules of evidence, the rules of civil procedure, rules of decorum, etc... . Their pleadings are often unintelligible and are not properly researched or supported. Having no clinic or clerk or standing master, the task falls to me to decipher and, if necessary research the issues raised, meet with the litigants, explain the fundamentals of the process to them, hold their hands through court, and draft the final order and judgment (as they have no idea how to even begin to draft proposed findings of fact, conclusions of law, or the other referenced documents). The last study I saw indicated that some 74 % of the cases filed in my district involve at least one pro se litigant.

Finally, the workload assessment(s) are not, in my opinion, properly weighted to take into consideration the judicial resources available to the various judges in the various districts throughout the state. As Judge Cybulski notes, neither he nor I have law clerks despite the fact that the legislature funded them during the last biennium. Nor do we have standing masters, court service investigators and agencies, pro se law clinics, or most of the many other services that many if not most of the urban districts and judges enjoy. Thus, at least in our districts, all of the tasks of judge, and they are many, fall to us. In my district, the duties of my judicial assistant also regularly fall to me. For example, for the approximately 6 out of the last 8-9 weeks while she was on family medical leave, in addition to my usual duties, I took the telephone calls, the walk-ins, got the mail, opened the mail, did the filing, did the calendaring, etc... . I did the same several years ago when she went to Italy for 3 weeks for the birth of her first grandchild. I've done it many times in 16 years for a variety of reasons and not once requested nor had a temporary assistant come into the office to assist.

In sum, the work load assessment(s) and the information contained therein neither fully nor fairly reflect the actual amount of work conducted by the various judges and should be viewed cautiously by the commission in its analysis.

Several of the proposals under consideration (e.g. proposals 2,3, and 5) would, if adopted, add not only increased workloads without additional resources to my district but would also add considerably more travel over hazardous roads, through one or more additional mountain ranges. For example, proposal # 3, if adopted, would add some 42 miles and 45 minutes to my already

127 miles and 2 hour commute for court from my home in Roundup. That commute would include travel through several mountain ranges and Deep Creek, often during inclement weather. On Tuesday of this week, for example, I traveled from Roundup to White Sulphur Springs for a custody hearing scheduled to commence at 10:00 a.m. I encountered an all out blizzard between Martinsdale and White Sulphur Springs, at times so bad that I was literally stopped in the middle of the roadway because I could not see the center or fog lines or even the delineaters, an occurrence, I would add, that is not at all uncommon during my travel for court. Following Court I then traveled on to Helena for the commission meeting. The weather and roads from Townsend to Helena were clear and dry and my trip was uneventful.

The commute for the Judges from Lewis and Clark County to Townsend to hold court, on the other hand, is 33 miles and 37 minutes over good roads and through no mountain ranges. This proposal does not create another judgeship and, at best, provides only a token amount of relief to the judges in Lewis and Clark County. The cost benefit analysis seems to clearly suggest that this is not a viable solution and that it should be rejected.

The foregoing analysis is equally applicable to proposal # 2. This proposal would add 102 miles and 1½ hours commute to Forsyth on the other end of my district (and/or 114 miles and 1 hour and forty-eight minutes to Hysham). Living in Roundup, this would necessitate travel in two separate directions to hold court and would likely create a logistical and scheduling nightmare. Highway 12 East to Forsyth is a desolate stretch of road that is often impassable during the winter months with no services available beyond Melstone. This proposal would increase the geographical area of my district by approximately 5,100 square miles.

The commute for the Judges in Miles City, on the other hand, is 46 miles and 45 minutes over Interstate 94 (74 miles and approximately 1 hour for Hysham). While the proposal would create a judge for Yellowstone County, it would be at the expense of the 16<sup>th</sup> judicial district and leave a still large desolate district to be served by just one judge. This too seems like a poor solution, particularly in view of the fact that Yellowstone County does not even have a sufficient number of courtrooms for the existing judges who are sharing courtrooms. It would seem that the redistricting cart may be ahead of the courtroom horse. This proposal too is not a feasible solution to the problem and should be rejected by the commission. This same analysis is equally applicable to most of the proposals offered by the commission and, for the sake of brevity, will not be repeated here.

Proposal #4 proposes to create a judgeship for Yellowstone County by outright eliminating my district. Beyond eliminating my job, my judicial assistant's job, my court reporter's job, and my youth probation officer's job as well as her assistant, the proposal would again add vast geographical areas and increased caseloads to Judge Gilbert's and Judge Oldenburg's districts along with all of the attendant problems that they, I, and others have already mentioned. I cannot fathom why the commission would seriously consider eliminating my position (and that of my staff), increasing the case loads and travel for Judge Gilbert and Judge Oldenburg, and causing all of the upheaval and problems associated with it to provide nominal relief to Yellowstone County who has no courtroom for an additional judge and which will likely be viewed by the next legislature as nothing more than a token gesture at best. Please reject this

proposal.

The various other proposals, both those potentially affecting my district as well as those affecting other districts, suffer from all of the infirmities mentioned by me, my colleagues, and others. None offer a viable solution to the burgeoning caseloads that are occurring not only in the urban districts, but every district throughout the state. The only real, meaningful, and least harmful solution is for the legislature to authorize funding for additional judges which everyone agrees is clearly necessary.

In closing, I would submit that spreading the cancer that is burgeoning caseloads from Montana's urban centers to its rural judicial districts does not cure but rather hastens the death of the entire judicial host. It is axiomatic that one cannot give to one jurisdiction without taking from another. While the citizens in urban Montana may profit to some small degree by redistricting, there can be no denying that it will be at the significant expense of Montana's citizens in rural central and eastern Montana. This is the reality of the proposals under consideration by the commission. I would suggest that none of the proposals that are offered represent a real, meaningful, solution to the problem and that they should all be rejected. I hope and pray, on the other hand, that, if the commission recommends any form of redistricting, it does so because such is necessary and helpful and not because of some misplaced belief that it must do so in order to justify its existence or some other reason.

Respectfully,

Randal I. Spaulding  
District Judge  
Fourteenth Judicial District